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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/689,994	10/13/2000	Jagannadh V. Satyavolu	11936.5US11	1018

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[REDACTED] EXAMINER

FORTUNA, JOSE A

[REDACTED] ART UNIT      [REDACTED] PAPER NUMBER

1731

DATE MAILED: 03/21/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

HG

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/689,994	SATYAVOLU ET AL
	<b>Examiner</b>	<b>Art Unit</b>
	José A Fortuna	1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 27 December 2002.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 12-20 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-11 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 13 October 2000 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____   |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> . | 6) <input type="checkbox"/> Other: _____                                    |

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## **DETAILED ACTION**

### ***Election/Restriction***

1. Applicant's election without traverse of group I, claims 1-11 in Paper No. 7 is acknowledged.

### ***Drawings***

2. Color photographs and color drawings are acceptable only for examination purposes unless a petition filed under 37 CFR 1.84(a)(2) is granted permitting their use as acceptable drawings. In the event that applicant wishes to use the drawings currently on file as acceptable drawings, a petition must be filed for acceptance of the color photographs or color drawings as acceptable drawings. Any such petition must be accompanied by the appropriate fee set forth in 37 CFR 1.17(h), three sets of color drawings or color photographs, as appropriate, and an amendment to the first paragraph of the brief description of the drawings section of the specification which states:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the U.S. Patent and Trademark Office upon request and payment of the necessary fee.

Color photographs will be accepted if the conditions for accepting color drawings have been satisfied.

Note that the caption on figure 24 indicates that the figure is a color figure, even though the brief description of the drawings indicates that it is a black and white digital printout.

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Clarification is requested. Note also that nothing can be discerned from the black and white printout.

***Claim Rejections - 35 U.S.C. § 112***

3. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 is vague and indefinite as to what is to be considered a "bloomed surface." The claim is vague and indefinite since the metes and bounds of patent protection desired can not be ascertained.

***Claim Rejections - 35 U.S.C. § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Kickle et al., US Patent No. 4,181,747.

Kickle et al. teach seed fibers, including soy and corn fibers, which are treated with acid, see abstract. The fiber product is treated with an acid at temperatures between 150° to 180°F. The preferred acid is sulfuric acid, but other acids, such as hydrochloric, phosphoric, tartaric, citric, etc., can be used, see column 2, lines 47-50. The relative amounts of cellulose to

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hemicellulose in the fiber(s) is within the claimed range, since the same class of fiber(s) is/are used. Kickle et al. teach that acid-pasteurizing method can be applied to most seed hulls, including oats, peas, etc., see column 3, lines 34-41, (for claims 7-9).

6. Claims 1 and 7-9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Ramaswamy, US Patent No. 5,203,103.

Ramaswamy teaches the treatment of oat hulls, (claims 7 and 8), with an acid for dietary product, see abstract and column 5, lines 40-44. In the latter column 5, Ramaswamy teaches that the bleached fibers are treated with an acid, hydrochloric acid, for neutralizing the bleached fibers. Note that even though Ramaswamy does not teach the pulping or extraction of the fibers with an acid, the reference still reads on the claims, because the claims just requires that the fibers are treated with an acid, which Ramaswamy discloses.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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7. Claims 1 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Burkart, US Patent No. 6,251,221

Burkart teaches the pulping of wood and non-wood fibers, including seed based fibers, (cotton linters), which are treated with an acid to hydrolyze the starting material at atmospheric pressure, and temperatures not exceeding about 100°C, see abstract.

8. Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Marsland, US Patent No. 6,110,323.

Marsland teaches a process of treating agricultural waste, including, oat hulls, corn, etc., by acid hydrolyzing the starting materials followed by delignification of the remaining solids, fibers, at basic conditions. The delignified solids, fibers, can be bleached using several bleaching agents, including hypochlorite, peroxide, etc., see column 2, line 50 though column 3, line 10.

***Claim Rejections - 35 U.S.C. § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Column*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kickle et al., cited above in view of Ramaswamy, also cited above.

Kickle et al. is silent with respect to the bleaching of the fibers with hypochlorite and peroxide as claimed in claim 10. However, Ramaswamy teaches that bleaching dietary fibers, such as the ones disclosed by Kickle et al., even though optional, significantly improves the whiteness of the product and accordingly provides a more commercially acceptable product, see column 5, lines 21-34. Ramaswamy also teaches the use of hypochlorite(s) and peroxide combination as one of the bleaching agent acceptable for dietary product, see above column..

Therefore, the bleaching of the fibers taught by Kickle et al. as suggested by Ramaswamy would

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have been obvious to one of ordinary skill in the art, in order to obtain the benefits indicated above, e.g., a more commercially acceptable product.

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure in the art of "Seed fibers pulping."

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to José Fortuna, whose telephone number is (703)305-7498. The examiner can normally be reached on Monday-Friday from 9:30 A.M. to 5:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin, can be reached on (703)308-1164. The fax number for this group is (703)305-7115.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-0661.

When filing a FAX in group 1730, please indicate in the Header (upper right) "Official" for papers that are to be entered into the file, and "Unofficial" for draft documents and other communication with the PTO that are not for entry into the file of the application. This will expedite processing of your papers.

José A. Fortuna  
March 18, 2003

  
**JOSE FORTUNA**  
**PRIMARY EXAMINER**  
**ART UNIT 1731**